

# State of Missouri Office of Secretary of State

Case No. AP-08-10

IN THE MATTER OF:

RATE SEARCH, INC.;  
CLAYTON ANALYTICAL SERVICES, INC.;  
SCOTT LUSTER; *and*  
CLARK R. SCHULTZ,

Respondents.

Serve: Rate Search, Inc., at  
275 Union Blvd., Suite 1608  
St. Louis, Missouri 63108

Serve: Scott Luster at  
23 Southbridge Lane  
Edwardsville, Illinois 62025

Serve: Clayton Analytical Services, Inc., at  
7016 Kingsbury Blvd.  
St. Louis, Missouri 63130

Serve: Clark Schultz at  
7016 Kingsbury Blvd.  
St. Louis, Missouri 63130

## **CONSENT ORDER AS TO CLAYTON ANALYTICAL SERVICES, INC. AND CLARK R. SCHULTZ**

### **SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS**

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") alleges a violation of Section 409.5-501, RSMo. (Cum. Supp. 2008<sup>[1]</sup>), of the Missouri Securities Act of 2003 ("The Act") by Clayton Analytical Services, Inc. and Clark Schultz, its President ("Respondents") as a result of Clark Schultz committing the crime of Misprision of Felony in violation of Title 18, United States Code, Section 4.
2. Respondents and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to Respondents' alleged violation of The Act.

### **CONSENT TO JURISDICTION**

3. Respondents and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondents and these matters pursuant to the Missouri

Securities Act of 2003, Chapter 409, *et seq.*

4. Respondents and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2008), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

**WAIVER AND EXCEPTION**

5. Respondents waive their right to a hearing with respect to this matter.
6. Respondents waive any rights that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Enforcement Section that, should the facts contained herein prove to be false, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

**CONSENT TO COMMISSIONER'S ORDER**

8. Respondents and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis. Nothing in this paragraph affects Respondents' (a) testimonial obligations; (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual.
10. Respondents agree that Respondents are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents consent to the Commissioner's Findings of Fact, Conclusions of Law and Order as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

**COMMISSIONER'S FINDINGS OF FACT,**

**CONCLUSIONS OF LAW AND ORDER**

**I. Findings of Fact**

12. Rate Search, Inc. (hereinafter referred to as "Rate Search") was a Delaware

corporation engaged in the business of marketing, brokering and purchasing certificates of deposits (hereinafter referred to as "CDs") at financial institutions throughout the United States on behalf of, and with the investment moneys of its customers. At various times, Rate Search operated out of several offices in the St. Louis, Missouri area.

13. Clayton Analytical Services, Inc. (hereinafter referred to as "Clayton Analytical") was a Missouri corporation established in or about 1997 and engaged in the business of providing certain "back-office" administrative functions for Rate Search. Clayton Analytical had business addresses in the St. Louis, Missouri area.
14. Clark Schultz was an employee of Rate Search beginning in or about 1991, and incorporated Clayton Analytical in or about 1997. Clark Schultz was the president of Clayton Analytical, and its only employee. Initially as an employee of Rate Search, and then later through Clayton Analytical, Clark Schultz was responsible for finding the rates for the bank CDs and assisting in placing the CDs for the customers of Rate Search, producing paperwork related to those purchases, including trade tickets, trade confirmation, interest credit memos, and documents detailing account ledger activity and certificate of deposit holdings, assisting in the distribution of the interest payments to customers, assisting in the distribution of funds relating to the maturity and redemption of CDs to customers, answering customer service inquiries, calculating the monthly income to Rate Search, and assisting in the transfer of funds between Rate Search's different bank accounts.
15. Scott Luster was the president and owner of Rate Search. Luster had direct control over all aspects of Rate Search and was the principal person responsible for the operations of Rate Search. Luster marketed and brokered CDs through Rate Search to its customers.
16. Beginning in or about and between January 1, 2000, and continuing through at least June 30, 2007, both dates being approximate and inclusive, in Missouri and elsewhere, Scott Luster, Rate Search, and others, **APART FROM CLARK SCHULTZ**, knowingly participated in a scheme to defraud and obtain money from Rate Search customers, in an amount in excess of \$4,500,000, by means of materially false and fraudulent pretenses, representations, and promises.
17. It was a part of the scheme that Scott Luster and Rate Search failed to purchase one and more CDs for Rate Search customers, despite having received directions and funds from the Rate Search customers to purchase the CDs, and failed to advise the Rate Search customers that their CDs had not been purchased. The Rate Search customers' money and funds were used instead for unrelated business purposes and for personal use by Scott Luster and others.
18. It was further part of the scheme that Scott Luster and Rate Search, failed to "roll over" one and more CDs for Rate Search customers, despite having received directions from the Rate Search customers to do so, and failed to advise the Rate Search customers that their CDs had not been "rolled over." Further, Scott Luster and Rate Search, failed to disburse the funds received by Rate Search from the non "rolled over" CDs to the Rate Search customers. The Rate Search customers' money and funds were used for unrelated business purposes and for personal use by Scott Luster and others.

19. It was a further part of the scheme that on one and more occasions when banks would call Rate Search customers' CDs, Scott Luster and Rate Search failed to advise the Rate Search customers that their CDs had been called, and failed to disburse the funds received by Rate Search from the called CDs to the Rate Search customers. The Rate Search customers' money and funds were used for unrelated business purposes and for personal use by Scott Luster and others.
20. It was a further part of the scheme that on one and more occasions, Rate Search redeemed Rate Search customers' CDs prior to maturity. Scott Luster and Rate Search failed to disburse the funds received by Rate Search from the early redemption of the Rate Search customers' CDs, and failed to advise the Rate Search customers that their CDs had been redeemed prior to maturity. The Rate Search customers' money and funds were used for unrelated business purposes and for personal use by Scott Luster and others.
21. It was further part of the scheme that on one or more occasions, Scott Luster and Rate Search sent false trade confirmations to Rate Search customers falsely advising that one and more CDs had been purchased on behalf of the customers when, in fact, the CDs had not been purchased.
22. It was further part of the scheme that on one or more occasions, Scott Luster and Rate Search sent false documents detailing account ledger activity and certificate of deposit holdings to Rate Search customers falsely advising that one and more CDs were being held by FDIC insured financial institutions on behalf of the customers when, in fact, either the CDs had not been purchased, the CDs had previously been called prior to maturity, or the CDs had previously been redeemed by Rate Search prior to maturity.
23. It was further part of the scheme that on one and more occasions, Scott Luster and Rate Search sent payments to Rate Search customers purportedly representing interest payments on CDs held on behalf of the customers when, in fact, either the CDs had not been purchased, the CDs had previously been called, or the CDs had previously been redeemed, in order to lull the Rate Search customers into believing that their CDs were being held by FDIC insured financial institutions.
24. It was further part of the scheme that Scott Luster and Rate Search maintained the internal records of Rate Search to falsely represent that CDs had been purchased and were being held by FDIC insured financial institutions on behalf of Rate Search customers when, in fact, they had not been purchased and were not being held.
25. At the direction of Scott Luster, Clark Schultz participated in transferring customer funds from the Rate Search escrow account to the Rate Search operating account knowing that the funds would be and were being withdrawn from the operating account by Scott Luster for any use Scott Luster determined, including his own personal use.
26. On or about October 1, 2006, for the purpose of executing the above-described scheme to defraud and to obtain money and in attempting to do so, Scott Luster and Rate Search knowingly caused to be delivered by United States Postal Service, according to the directions thereon, mail matter consisting of a false account ledger statement mailed from Rate Search, Inc., located at The Chase Park Plaza, 232 N.

Kingshighway, Suite 206, St. Louis, Missouri 63108, to Rate Search Customer, The America Society of Appraisers, located at 555 Herndon Parkway, Suite 125, Herndon, Virginia 20170.

27. On or about December 13, 2006, Clark Schultz liquidated Certificate of Deposit, Account Number 1110589569, being held for the benefit of an investor and intentionally failed to remove the information regarding Certificate of Deposit, Account Number 1110589569, from the Rate Search database which, therefore, caused the account statement mailed by Scott Luster and Rate Search to an investor during January, 2007, to be false. Clark Schultz acknowledges that the scheme described above constituted a felony under Title 18, United States Code, Section 1341 - Mail Fraud. Clark Schultz, being aware of the scheme, did not report or notify any law enforcement authority, and the failure to remove the information regarding Certificate of Deposit, Account Number 1110589569, from the Rate Search database thereby causing the account statement mailed by Scott Luster and Rate Search to an investor during January, 2007 to be false acted to conceal the crime.
28. Clayton Analytical and Clark Schultz ceased providing services to Rate Search on or about March 6, 2007.
29. For the years 2000 - 2007, inclusive, Clayton Analytical and Clark Schultz received from Rate Search as total compensation the sum of \$492,420.00. Clayton Analytical and Clark Schultz received no other payments from Rate Search and Scott Luster.

## **II. CONCLUSIONS OF LAW**

30. Clayton Analytical Services, Inc. and Clark Schultz violated Section 409.5-501, RSMo. (Cum. Supp.), when:

On or about December 13, 2006, Clayton Analytical Services, Inc., by and through Clark Schultz liquidated Certificate of Deposit, Account Number 1110589569, being for the benefit of an investor and intentionally failed to remove the information regarding Certificate of Deposit, Account Number 111589569, from the Rate Search, Inc. database which, therefore, caused the account statement mailed by Scott Luster and Rate Search, Inc. to an investor during January 2007, to be false. Clark Schultz, being aware of the scheme set forth above, did not report to notify any law enforcement authority, and the failure to remove the information regarding Certificate of Deposit, Account Number 111589569, from the Rate Search, Inc. database thereby the account statement mailed by Scott Luster and Rate Search, Inc. to an investor during January 2007 to be false acted to conceal the crime.

## **III. ORDER**

**WHEREAS**, the Commissioner, after consideration of the above and on the consent of Respondents and the Enforcement Section, finds the following Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo. (Cum. Supp. 2008).

**NOW THEREFORE**, it is hereby Ordered that:

1. Respondents are prohibited from offering or selling unregistered securities in

- violation of Section 409.3-301, RSMo. (Cum. Supp. 2008).
2. Respondents are prohibited from engaging in an act, practice or course of business that operates as a fraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made not misleading, in violation of Section 409.5-501, RSMo. (Cum. Supp. 2008).
  3. Clark Schultz is ordered to make any restitution or other payments as ordered by the Sentencing Court and shall provide verification of all said payments to the Enforcement Section. Failure to comply with all aspects of the plea agreement shall be considered a violation of this Order and the Commissioner may refer this matter to the Missouri Attorney General's Office for prosecution.
  4. Respondents shall pay their own costs and attorneys fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2009.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:  
Missouri Securities Division  
Mary S. Hosmer  
Assistant Commissioner of Securities

Clayton Analytical Services, Inc.  
By Clark R. Schultz individually and as  
president of Clayton Analytical Services,  
Inc.

Approved as to Form  
Gary R. Sarachan,  
Attorney for Respondents

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[1] All statutory references used herein refer to the 2008 Cumulative Supplement. There have been no changes to the statutes cited herein since the adoption of The Missouri Securities Act of 2003.